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IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

No. 466

SECURITIES AND EXCHANGE COMMISSION,
Petitioner,
versus

LOUISIANA PUBLIC SERVICE COMMISSION,
MIDDLE SOUTH UTILITIES, INC. AND
LOUISIANA POWER & LIGHT COMPANY,

Respondents.

**BRIEF OF RESPONDENT, LOUISIANA POWER &
LIGHT COMPANY, IN OPPOSITION TO PETI-
TION FOR WRIT OF CERTIORARI.**

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LIGHT COMPANY.

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Respondent, Louisiana Power & Light Company, respectfully urges that the petition for certiorari of the Securities and Exchange Commission be denied for the following reasons:

- (a) No question of Federal law of sufficient significance to warrant the granting of the writ is presented.
- (b) No conflict between decisions of Circuit Courts is here involved.

(c) The order of the Court of Appeals sought to be reviewed is not a final judgment.

(d) Compliance by the Securities and Exchange Commission with the order of the Court below will impose no burden on the S.E.C. not already imposed by statute.

(a)

No question of Federal law of sufficient significance to warrant the granting of the writ is presented

Although the issues decided by the Court below are quite vital to Respondent, nevertheless, at this stage in the enforcement of the Public Utility Holding Company Act, the issues would not appear to have any wide applicability to others. Although the S.E.C., in its petition, conjures up many imagined dangers, it has been unable to cite a single instance in which other holding companies or subsidiaries have, since the application filed by the Louisiana Public Service Commission on December 27, 1954, actually filed a petition to reopen proceedings on this same ground. The decision of the Court of Appeals was rendered on June 30, 1956, and surely, if the issues decided had important application in other situations, petitions for reopening would have been filed by this time. Since the filing of the Commission's petition and since the decision in the Court below, Respondent has been unable to find any discussion of the issues there raised, and later decided, in any legal periodical. Surely, if the issues decided had presented important Federal questions, there would have been considerable discussion in the utility industry and among the members of the Bar.

(b)

*No conflict between decisions of Circuit Courts
is here involved*

The Fifth Circuit Court, in its decision, expressly states that it is not disagreeing with the decision in the *Engineers* case and the *Philadelphia* case, and it is submitted that a careful comparison of the instant case with those cases will show that this decision of the Court below does not conflict with either case.

(c)

*The order of the Court of Appeals sought to be
reviewed is not a final judgment*

The Court of Appeals simply remands the case to the S.E.C. with the instruction that it take into consideration evidence to be offered by the Louisiana Commission. When that has been done and the record is then complete, all the issues passed on by the Court of Appeals may then be reviewed by this Court with the entire record before it. *Stern & Glissman, Supreme Court Practice, 2nd Edition* p. 130.

(d)

*Compliance by the Securities and Exchange
Commission with the order of the Court below
will impose no burden on the S.E.C. not already
imposed by statute*

The S.E.C., in its petition, complains that to require it to take evidence as to whether there has been any actual substantial loss of economies is unduly burdensome. Respondent feels that it is justly aggrieved when it is ordered to dispose of some \$11,000,000 of gas prop-

erties without the S.E.C. even going into the question of fact of loss of economies, or taking into consideration evidence offered by an impartial, responsible Public Service Commission having jurisdiction over rates, on the ground that to do this would be burdensome on it. The Act places squarely on the S.E.C. the burden of determining whether there are any losses of substantial economies when this question is placed at issue, and it comes with ill grace for the S.E.C. to complain that it is too much trouble to carry out its duties imposed by law. It is Respondent's appreciation of the administrative process that it is peculiarly designed for investigations such as that here involved, namely, the determination of facts as to the loss of substantial economies.

In contrast to the position taken by the S.E.C., the Louisiana Commission has caused its staff to make a detailed study of the effect of the separation of the gas properties of Respondent on the consumers in Louisiana, and has concluded that such separation would result in loss of substantial economies, which would be to the great disadvantage of the ratepayers in Louisiana. All of Louisiana Power's operations, both gas and electric, are wholly within the State of Louisiana, and all of its retail rates are subject to regulation by the Louisiana Commission, except its service in a portion of the City of New Orleans, which constitutes a very small part of its operations. The Louisiana Commission, which is an elective Commission, is therefore the Commission primarily concerned. The Securities and Exchange Commission does not even have jurisdiction of the regulation of Respondent's wholesale rates in interstate commerce, since these are subject to regulation by the Federal Power Commission.

Nowhere does the Petitioner point out any evils to be cured, devils to be exorcised, or compensating advantages to result from the segregation of the gas properties.

WHEREFORE, Respondent, Louisiana Power & Light Company, respectfully prays that the writ applied for be denied.

Respectfully submitted,

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CERTIFICATE OF COUNSEL

I hereby certify that the foregoing brief has been served by depositing same in the United States mail, with air-mail postage prepaid, addressed to counsel of record for petitioner as follows:

Solicitor General,
Department of Justice,
Washington 25, D. C.

Thomas G. Meeker,
General Counsel,
Securities and Exchange Commission,
Washington, D. C.

Securities & Exchange Commission,
Attn: Orval L. Dubois, Secretary,
Washington, D. C.

Monte M. Lemann

October 26, 1956